

STATE OF MICHIGAN
COURT OF APPEALS

DYKEMA GOSSETT, PLLC,

Plaintiff/Counter-Defendant-
Appellee/Cross-Appellant,

v

ROGER M. AJLUNI, M.D., MEDICAL FITNESS
CENTER, and RMA PHYSICIANS, PC,

Defendants/Counter-Plaintiffs-
Appellants/Cross-Appellees.

FOR PUBLICATION
November 16, 2006
9:00 a.m.

No. 259218
Wayne Circuit Court
LC No. 02-202046-CK

Official Reported Version

Before: Borrello, P.J., and Jansen and Cooper, JJ.

JANSEN, J. (*concurring in part and dissenting in part*).

I concur in the result reached by the majority. I write separately because I would not decide this appeal on the basis of quantum meruit and because I dissent insofar as the majority announces a new rule of law.

The trial court properly determined that defendants breached the parties' express contract. I would affirm the finding of liability on this ground. Accordingly, I would not reach the issue whether recovery was alternatively justified under the equitable doctrine of quantum meruit. Such a discussion of quantum meruit is irrelevant and merely cumulative in light of the court's proper finding of a breach of contract.

I also note that the express language of the contract itself explicitly contemplated quantum-meruit-like recovery. In other words, the contract was not a traditional contingent-fee contract. It provided that "[i]f there is a resolution of the litigation which involves something other than a cash payment, fair value will be given for the benefit based on an agreement to be reached between you and the Dykema firm." This clause, rather than providing for a traditional contingent fee, essentially provided for quantum-meruit-like contract damages in the event that the litigation was resolved through a noncash settlement.

This is precisely the manner in which the litigation between defendants and BCBSM was resolved here—not by way of a cash payment, but by way of a confidential settlement agreement and a voluntary dismissal of the claims and counterclaims. Therefore, pursuant to the parties' express agreement, quantum-meruit-like recovery was the appropriate measure of

contract damages at law, irrespective of the applicability of the equitable remedy of quasi-contract or quantum meruit in this matter.

Inasmuch as the majority announces a new rule of law regarding the applicability of quantum meruit in the context of legal-fee recovery, I respectfully dissent. I would not announce any new rule of law in this regard.

I would not decide this appeal on the basis of the equitable doctrine of quantum meruit. Nor would I announce a new rule of law concerning the applicability of quantum meruit in the context of legal-fee recovery. Otherwise, I concur in the result reached by the majority.

/s/ Kathleen Jansen